SPEECH
OF
Mr. GILES.

On the bill received from the Senate, entitled "An Act to repeal certain acts respecting the organisation of the courts of the U. States."

Delivered in the *House of Representatives*, February 18, 1802.

Mr. GILES said, that he felt some degree of apprehension, that in the course he deemed it necessary to take in the discussion of this question, some observations might fall from him, which might not be in strict harmony with the feelings of some gentlemen of the committee. He should regret, however, if a compliance with a sense of duty should produce that effect. He said, therefore, that he wished to apprise gentlemen, that he intended to direct his observations as much as possible to the effects and tendencies of measures; and that when he was constrained to speak of the views of gentlemen, it would be with respect to what he conceived to be their opinions in relation to the general interests; and not to private gratifications. He said, it was natural that men should differ in the choice of means to produce a given end, and more natural that they should differ in the choice of political means than any other; because the subject presented more complicated and variable objects, out of which to make a choice. Accordingly a great portion of the human mind has been at all times directed towards monarchy, as the best form of government to enforce obedience and ensure the general happiness; whereas another portion of the human mind, has given a preference to the republican form, as best calculated to produce the same end; and there is no reason for applying improper motives to individuals, who should give a preference to either of these principles; provided in doing so, they follow the honest dictates of their own judgments. It must be obvious to the most common observer, that from the commencement of the government of the United States, and perhaps before it, a difference of opinion existed amongst the citizens, having more or less reference to these two extreme fundamental points; and that it manifested itself in the modification or administration of the government, as soon as it was put into operation. On one side it was contended, that in the organization of the constitution, a due apportionment of authority had not been made amongst the several departments. That the legislature was too powerful for the executive department; and to create and preserve a proper equipoise, it was necessary to infuse into the executive department by legislation all artificial powers compatible with the constitution, upon which the most diffusive construction was given; or, in other words, to place in executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his constitutional responsibility to the people.—On the other side, it was contended, that the doctrine of patronage was repugnant to the opinions and feelings of the people; that it was unnecessary, expensive and oppressive, and that the highest energy the government could possess, would flow from the confidence of the great mass of the people, founded upon their own sense of their common interests. Hence what is called party in the United States, grew up from a division of opinion respecting these two great characteristic principles, patronage, or the creation of partial interests for the protection and support of government, on

the one ſide.—On the other ſide, to effect the ſame end, a fair reſponſibility of all repreſentatives to the people; an adherence to the general intereſts, and a reliance on the confidence of the people at large, reſulting from a ſenſe of their common intereſts. A variety of circumſtances exiſted in the United States, at the commencement of the government, and a great number of favorable incidents continued afterwards to ariſe, which gave the patronage ſyſtem the preponderancy, during the firſt three Preſidential terms of election; notwithſtanding it was evident, that the ſyſtem was adopted and purſued in direct hoſtility to the feelings and opinions of a great portion of the American people. The government was uſhered into operation under a vaſt excitement of federal fervor, flowing from its recent triumph on the queſtion of adopting the conſtitution.—At that time a conſiderable debt was afloat in the United States, which had grown out of the revolutionary war. This debt was of two kinds; the debt proper of the United States, or engagements made by the United States in their federal capacity; the other, the ſtate debts, or engagements entered into by the reſpective ſtates for the ſupport of the common cauſe.

The favorers of the patronage ſyſtem readily availed themſelves of theſe materials for erecting a monied intereſt; gave to it a ſtability, or qualified perpetuity, and calculated upon its certain ſupport in all their meaſures of irreſponſibility.

This was done not only by funding the debt proper of the U. States, but by aſſuming the payment of the ſtate debts, & funding them alſo; and it is believed, extending the aſſumption beyond the actual engagements of the ſtates. Hence the federal axiom, that a public debt is a public bleſſing.—Shortly after this event, an Indian war ſprang up, he would not ſay by what means; in conſequence of which an army was added to the liſt of patronage; the Algerines commenced a predatory war upon the commerce of the United States, and thence a navy formed a new item of patronage. Taxes became neceſſary to meet the expences of this ſyſtem, and an arrangement of internal taxes, an exciſe, &c. &c. ſtill ſwelled the liſt of patronage. But the circumſtance which moſt favored this ſyſtem, was the breaking out of a tremendous and unprecedented war in thoſe countries of Europe with which the United States had the moſt intimate relations. The feelings and ſympathies of the people of the U. States were ſo ſtrongly attracted by the tremendous ſcenes exiſting there that they conſidered their own internal concerns in a ſecondary point of view. After a variable conduct had been purſued by the United States in relation to theſe events, the depredations committed upon commerce and the excitement produced thereby, enabled the adminiſtration to indulge themſelves in a more deciſive courſe, and they at once puſhed forward the people to the X. Y. Z. of their political alphabet, before they had well learned and underſtood the A. B. C. of the principles of the adminiſtration.

Armies and navies were raiſed, and a variety of other ſchemes of expence were adopted, which placed the adminiſtration in the embarraſſing predicament, either to violate their faith with their public creditors, or to reſort to new taxes. The latter alternative was preferred, accompanied with other ſtrong coercive meaſures to enforce obedience. A land tax was laid for 2,000,000 of dollars. This meaſure awakened the people to a ſenſe of their ſituation; and ſhook to the foundation all thoſe federal ramparts which had been planned with ſo much ingenuity, and erected around the executive with ſo much expence and labour. Another circumſtance peculiarly favourable to the advocates of executive patronage was that during the two firſt preſidential terms, the chief executive magiſtrate poſſeſſed a greater degree of popularity

and the confidence of the people than ever was, or perhaps ever will be, again attached to the perſon occupying that dignified ſtation. The general diſquietude, which manifeſted itſelf in conſequence of theſe enterpriſing meaſures, in the year 1800, induced the federal party to apprehend, that they had puſhed their principles too far, and they began to entertain doubts of the reſult of the preſidential election, which was approaching. In this ſtate of things it was natural for them to look out for ſome department of the government, in which they could intrench themſelves in the event of an unſucceſsful iſſue in the election; and continue to ſupport thoſe favourite principles of irreſponſibility, which they could never conſent to abandon. The judiciary department of courſe, preſented itſelf as beſt fitted for their object, not only becauſe it was already filled with men, who had manifeſted the moſt indecorous zeal in favour of their principles, but becauſe they held their offices by indefinite tenures, were not ſubject to periodical appointments, and of courſe were further removed from any reſponſibility to the people, than either of the other departments. Accordingly on the 11th of March 1800, a bill for the more convenient organization of the courts of the United States was preſented to the houſe of repreſentatives. This bill appears to have had for its objects, 1ſt, the gradual demolition of the ſtate courts by encreaſing the number, and extending the juriſdiction of the federal courts. 2d, To afford additional protection to the principles of the then exiſting adminiſtration by creating a new corps of judges of concurring political opinions. This bill however was not paſſed into a law during that ſeſſion of congreſs, perhaps from an apprehenſion, that it would tend to encreaſe the diſquietudes which other meaſures had before excited, and therefore operate unfavourably to the approaching preſidential election. At the next ſeſſion after the reſult of the election was aſcertained, the bill, after having undergone ſome conſiderable alterations, was paſſed into the law now under diſcuſſion. This law, it is now ſaid, is inviolable and irrepealable. It is ſaid, the independence of the judges will be thereby immolated. Yes, ſir, this law is now conſidered as the ſanctuary of the principles of the laſt adminiſtration, and the tenures of the judges as the horns of inviolability within that ſanctuary. He ſaid, we are now called upon to rally round the conſtitution as the ark of our political ſafety. Gentlemen, diſcarding all generaliſing expreſſions, and the ſpirit of the inſtrument, tie down all conſtruction to the ſtrict letter of the conſtitution. He ſaid it gave him great pleaſure to meet gentlemen on this ground; and the more ſo, becauſe he had long been in the habit of hearing very different language from the ſame gentlemen. He had long been in the habit of hearing the ſame gentlemen ſpeak of the expreſſions of "the common defence and general welfare," as the only valuable part of the conſtitution, that they were ſufficient to obliterate all the ſpecifications, and limitations of power. That the conſtitution was a mere noſe of wax, yielding to every impreſſion it received. That every "opening wedge," which was driven into it, was highly beneficial, in ſevering aſunder the limitations and reſtrictions of power. That the republicaniſm it ſecured, meant any thing or nothing. It gave him therefore great pleaſure at this time to obey the injunctions of gentlemen in rallying round the conſtitution as the ark of our political ſafety, and of interpreting it by the plain and obvious meaning and letter of the ſpecified powers. But, he ſaid, as if it was always the unfortunate deſtiny of theſe gentlemen to be upon extremes, they have now got round to the oppoſite extreme point of the political compaſs, and even beyond it. For, he ſaid, they not only tie down all conſtruction to the letter of the inſtrument, but they tell us, that they ſee,

and call upon us also to see written therein, in large capital characters, "the indefinite independence of judges;" which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, or in any other political establishment, he believed, under the sun. Mr. Giles said, he rejoiced that this subject was now to be discussed; he thought the crisis peculiarly auspicious for the discussion. He said the European world, with which the United States have the most relations, is now tranquilized. The tremendous scenes of blood and revolution, which had agitated that portion of the globe, had at length subsided into profound peace; and had left mankind, in silent amazement, to retrospect the wonderful events which were passed; and he hoped, with calm deliberation to improve the lessons they had furnished for the benefit of mankind in time to come. The interests and sympathies, which the people of the United States felt in these events, no longer turn their attention from their own internal concerns; arguments of the highest consideration for the safety of the constitution, and the liberty of the citizens, no longer receive the short reply, French partizans! Jacobins! Disorganizers! And although the gentleman from North Carolina, sees, or thinks he sees the destructive *spirit* mount in the whirlwind and direct the storm; let him be consoled by the information, 'that all these our actors are *mere spirits* and are dissolved into thin air.' Yes, sir, these magical delusions are now vanished, and have left the American people & their congress in their real persons, and original American characters, engaged in the transaction of American concerns.

Upon taking a view of our internal situation, he observed, although party rage may not be done away; it may be said, its highest paroxism is past. And although the gentleman from New-York, (Mr. T. Morris) yesterday observed, that the President had commenced a system of persecution; so ignorant he said, he was of the existence of such a system, that he could not conceive to what the gentleman alluded. It is some time, Mr. Chairman, since a member of this House, and sundry printers throughout the United States, have been amerced and imprisoned to appease the vengeance of an unconstitutional sedition act, merely for publishing their own sentiments, which happened to be unpalatable to the then existing administration! It is some time, sir, since we have seen judges who ought to have been independent, converted into political partizans, and like executive missionaries pronouncing political harangues throughout the United States! It is some time, sir, since we have seen the zealous judge, stoop from the bench to look out for more victims for judicial vengeance! It is some time since we have seen the same judicial impetuosity drive from the bar, the most respectable counsel, who humanely proposed to interpose between a friendless and unprotected man, and the judicial vengeance to which he was doomed! It is some time, sir, since we have seen the same judicial zeal extending the provisions of the sedition act, by discovering that it had jurisdiction of the lex non scripta, or common law! It is some time, since we have seen the chief executive magistrate dooming to humiliation 'in dust and ashes' a great portion of the American people! Yes, sir, these terrific scenes are past. These noisy declamations, and this judicial zeal, are hushed into silence by the audible pronunciation of the public will. He said, we may even indulge the hope, Mr. Chairman, that our pulpits will not much longer be converted into political forums; and that the meek and humble teachers of the christian faith, instead of stirring up all the angry and destructive passions of the human mind,

will ere long, once more condescend, to teach those precepts of humility, forbearance and toleration, taught them by their divine preceptor. Those precepts so essential to the discovery of truth, by pre-disposing the mind to deliberation and reflection.

The present Executive pursuing the general good, and supported by the general confidence, stands not in need of these artificial aids. He invites inquiry. He knows, that the high-st encomium, which can be bestowed upon his administration, would flow from a correct understanding of his motives and his conduct. Instead of calling in the aid of sedition acts, to the defamatory scribblers, who appear to increase in numbers, and in impudence, in proportion to the desperation of their cause, and their security from punishment, he has said, 'let them stand undisturbed, as monuments of the safety; with which error of opinion may be tolerated, where reason is left free to combat it.' Under these auspicious circumstances, he said, he proceeded to the discussion of the important question before us with pleasure, conscious that he was subject to error, and knowing, that if he did *err*, it was *his interest* to be corrected; confident also, that there was a mass of intelligence and calm reflection at this time in the people of the United States, competent to detect the error, and apply the corrective. Impressed with these sentiments he differed widely in opinion with the gentleman from North-Carolina, (Mr. Henderson) who had said, 'that if the bill upon your table should pass into a law, he would not heave a sigh or drop a tear upon the instantaneous demolition of the whole constitution. The sooner it was done the better.' Sir, this gentleman and his associates in political opinions, have termed themselves 'lovers of order.' Is this an evidence of the practice, we are to expect from those gentlemen, under their professions so long, and so loudly made to the people of the United States? Cannot that gentleman find some reason to regret that sentiment, in the confidence due to the intelligence and patriotism of a great portion of his fellow citizens, who differ with him on that point? Or do the gentleman and his political associates claim with presumptuous vanity, not only the appellation of the exclusive 'lovers of order,' but also the monopoly of all the intelligence and patriotism of the nation? He had too much respect for gentlemen, to suppose they would place their pretensions on this ground. He begged pardon of the committee for this digression. He had been impelled to it from the course the debate had taken, and particularly from the indecorous attacks made on the President of the United States. He said, he would now proceed to examine whether the repeal of the judiciary law of the last session of congress would in any respect violate that salutary and practicable independence of the judges, which was secured to them by the constitution. He said the term independence of judges or of the judiciary department, was not to be found in the constitution. It was therefore a mere inference from some of the specified powers; and he believed in the meaning of gentlemen, and to the extent they carry it, the term is not to be found either in the spirit, general character, or phraseology of any article or section of the constitution. He meant to give the constitution the most candid interpretation in his power, according to the plain and obvious import of the English language. He should discard in his interpretation, the terms "common defence and general welfare," which had been resorted to by some gentlemen. He considered these words as containing no grant of power whatever, but merely the expression of the ends or objects to be effected by the grants of specified powers. He therefore protest-

ed againſt drawing any aid whatever from them in his conſtruction of the inſtrument. He ſaid he had read through the whole conſtitution to enable him to form his opinion upon this queſtion, for fear there might be in ſome hidden corner of it, ſome proviſion, which, might demonſtrate the unconſtitutionality of the preſent bill; and if ſo, although he ſhould lament ſuch a proviſion, he would inſtantly give up the bill. But his reſearches had terminated in a different reſult. He ſaid he found from the general character of the conſtitution, that the general will was its baſis—the general good its object—and the fundamental principle for effecting this object, was the reſponſibility of all public agents, either mediately or immediately to the people. He ſaid the context of the conſtitution would demonſtrate the two firſt points, which he begged to read.

"We, the people of the United States, in order to form a more perfect Union, eſtabliſh Juſtice, inſure domeſtic Tranquility, provide for the Common Defence, promote the General Welfare, and ſecure the Bleſſings of Liberty to Ourſelves and our poſterity, Do ordain and eſtabliſh this Conſtitution for the United States of America."

Here we find the conſtitution founded upon the will of the people; and the object declared to be, the good of the people. Through the whole body of the conſtitution may be diſcerned the reſponſibility of all public agents, either mediately, or immediately, to the people. This reſponſibility reſults, 1ſt, from the diviſion of authority into different departments—2d, From a ſpecification and limitation of the authorities of all and each of the departments—3d, From periodical appointments of the public agents. The firſt clauſe declares there ſhall be a Congreſs, to whom the buſineſs of legiſlation is confided. This Congreſs is to conſiſt, of a Houſe of Repreſentatives to be choſen by the people immediately, and reſponſible to them at the end of every two years; and a Senate to be choſen by the legiſlatures of the different ſtates, who are choſen by the people; one third of the Senators to be choſen every two years, and reſponſible at the end of every ſix years. The Executive power is veſted in a Preſident, who is choſen by electors who are choſen for that expreſs purpoſe by the people, and reſponſible at the end of every four years. The Preſident may be conſidered as immediately reſponſible to the people, although choſen through the medium of electors: Becauſe it is found in practice, that the electors are conſtrained to avow the vote they intend to give before they are choſen, and the people have generally made their elections with a view to that object.

Thus then, are formed two departments, their powers ſpecified and defined, the times for exerciſing their powers fixed, and indeed a complete organiſation for the execution of their reſpective powers without the intervention of any law for that purpoſe. A third department, to wit, the Judiciary department, is ſtill wanting. Is that formed by the conſtitution? How is that to be formed? It is not formed by the conſtitution. It is only declared that there ſhall be ſuch a department; and it is directed to be formed by the other two departments, who owe a reſponſibility to the people. Here there ariſes an important difference of opinion between the different ſides of this houſe. It is contended on one ſide that the judiciary department is formed by the conſtitution itſelf. It is contended on the other ſide, that the conſtitution does no more than to declare that there ſhall be a judiciary department, and directs, that it ſhall be formed by the other two departments under certain modifications. Article 3. ſec. 1. the conſtitution has theſe words, "The judicial power of the United States ſhall be veſted in one ſupreme court and in ſuch inferior courts, as Congreſs may from time to time ordain and

eſtabliſh." Here then the power to ordain and eſtabliſh inferior courts is given to Congreſs in the moſt unqualified terms, and alſo to ordain and eſtabliſh, "one ſupreme court." The only limitation upon the power of congreſs in this clauſe, conſiſts in the number of ſupreme courts to be eſtabliſhed; the limitation is to the number of one, although that is an affirmative and not a negative expreſſion. The number of judges—the aſſignation of duties—the fixing compenſations—the fixing the times when, and places where the courts ſhall exerciſe their functions, &c. are left to the entire diſcretion of congreſs. The ſpirit, as well as the words of the conſtitution, are completely ſatisfied, provided one ſupreme court be eſtabliſhed. Hence, when all theſe eſſential points in the organization and formation of courts is entruſted to the unlimited diſcretion of congreſs, it cannot be ſaid, that the courts are formed by the conſtitution. For further reſtraints therefore upon the diſcretion of congreſs, the remaining part of the ſame ſection muſt be conſulted. Here he begged leave to remark, that he had often felt a veneration for the wiſdom of the ſages, who formed this conſtitution, conſidering the difficulties they had to encounter, reſulting from the various local prejudices, and local intereſts of the different parts of the United States, and the vaſt variety of opinions, which the ſubject preſented, it was almoſt wonderful to conceive how they ſhould have hit upon a ſyſtem ſo admirably calculated to protect and to promote the general intereſts, when adminiſtered according to its original meaning and intention. He could not go ſo far, as to ſay, it was perfect. He admitted, like other human productions, it was ſtamped with the common fallibility of man. That he wiſhed however, to ſee no radical changes in its principles. He wiſhed to hand it down to poſterity with thoſe amendments only, which experience ſhould ſuggeſt, and which would grow out of the continually varying ſtate of the nation. He ſaid it was not only remarkable for the wiſdom of its arrangements, but the correct and technical mode of expreſſion. The part of the ſection now to be examined, was an example of the juſtice of both theſe remarks. The words are, "The judges, both of the ſupreme and inferior courts, ſhall *hold* their offices during good behaviour, and ſhall, at ſtated times, receive *for their ſervices a compenſation* which ſhall not be diminiſhed *during their continuance in office.*"

The firſt part of this ſentence reſpects the relationſhip between the executive and the judiciary departments—It reſpects *judges or officers of the courts*, who are appointed by the preſident. The laſt part of the ſentence reſpects the relationſhip between the legiſlative and judiciary departments—It reſpects the creation of offices, the fixing the compenſation of the officers or judges, and their continuance in office. Theſe are the peculiar attributes of the legiſlative department. Accordingly the moſt correct and technical words are uſed in relation to both theſe objects. The term *hold their offices during good behaviour*, relates merely to the executive department. The term hold, is the common technical word, uſed to convey the idea of tenure. Tenure requires two parties. The one *granting*, the other *holding or receiving the grant*. Let the enquiry be made, of whom do the judges *hold?* The conſtitution furniſhes the anſwer, of the Preſident. One of the moſt obvious rules in the conſtruction of inſtruments of writing is, that the whole of it muſt be taken together, & not one particular part by itſelf. The following words will be found in the 2d ſection of the 2d article of the conſtitution. "And he, to wit: the Preſident, ſhall nominate and by and with the advice and conſent of the ſenate ſhall appoint ambaſſadors, other public miniſters and conſuls, judges of the ſupreme court, and all other officers of the United States, whoſe appointments are not

herein otherwiſe provided for, and which ſhall be eſtabliſhed by law.'" In the 3d ſection of the ſame article are theſe words, "and ſhall, to wit, the Preſident, commiſſion all the officers of the United States." Theſe three ſentences contain the relationſhip between the executive and judiciary departments ſo far as reſpects the objects of the preſent diſcuſſion.

To aſcertain the real meaning and import of theſe ſentences, they ſhould be read in connection with each other, excluding therefrom all intermediate words not immediately bearing on the ſubject. In that caſe the conſtitution would read thus. 'He (to wit) the Preſident ſhall nominate and appoint the judges of the ſupreme court and all other officers of the United States, and ſhall commiſſion all the officers of the United States. The judges both of the ſupreme and inferior courts ſhall hold their offices during good behaviour.' It may be now aſked, if this caſe of the judges of the ſupreme and inferior courts be not, an obvious exception out of the general Preſidential diſcretion of appointing and commiſſioning all officers of the United States during pleaſure? After the government has been in operation above twelve years, and the principle of commiſſioning all executive officers during pleaſure has been practiſed upon during the whole of the period by the executive, as well as the legiſlative department, the propriety of that practice is for the firſt time now become queſtionable. It is ſaid that the right to commiſſion during pleaſure, is by implication. It is readily admitted that there are no expreſs words in the conſtitution to that effect; but the inference from the words which are there, is almoſt as ſtrong as the words themſelves, if they had been inſerted. The Preſident is authoriſed without limitation to 'commiſſion all the officers of the United States.' The queſtion ariſes, by what tenure? The reply, is, according to his pleaſure, or diſcretion. It was not difficult to foreſee, that if the Preſident was fully empowered to commiſſion as he pleaſed, he would pleaſe to commiſſion during his pleaſure. The legiſlature has no more controul over an officer who holds an executive commiſſion during the pleaſure of the Preſident, than over a judicial officer holding his office during his good behaviour. The remedy given by the conſtitution being the ſame in both caſes (to wit) impeachment. Nor is there any reaſon why the office of the one ſhould be leſs ſubject to the diſcretion of the legiſlature than the office of the other, and it ſeems to be univerſally agreed, that although the legiſlature cannot deprive an executive officer of his office in any other way than by impeachment during the continuance of ſuch office, yet the office itſelf is always ſubject to be aboliſhed. The ſame reaſoning will hold with equal force reſpecting a judge and a judicial office. The reaſon why the executive is proſcribed from the removal of a judge, is to ſecure to the judge a complete independence of the Preſident, who is not reſponſible for the diſcharge of judicial duties; but the removal is perfectly correct in the caſe of an executive officer, becauſe the Preſident is highly reſponſible for the due diſcharge of executive duties. The legiſlature is not reſponſible for either, and of courſe ſtands in the ſame conſtitutional relation to both. This appears obvious from furniſhing to the legiſlature the ſame means of removing both, as will appear by the 4th ſection of the 2d article in the following words. "The Preſident, Vice-preſident, and all civil officers of the United States ſhall be removed from office by impeachment for, and conviction of, treaſon, bribery, or other high crimes or miſdemeanours." He now begged to call the attention of the committee particularly to the laſt clauſe of the ſentence, which aſcertains the conſtitutio-

nal connection between the *legislative* and *judicial* departments, so far as it respects the limitation of the legislative, in the exercise of the power committed to it, for the organization of the judicial department. He should place particular emphasis on these words of the constitution in the exposition he proposed to make. The words are 'and shall at stated times, receive for *their services*, a *compensation* which shall not be diminished, *during their continuance in office*.' The first part of this section having given to congress the power of creating courts, ascertaining the number of judges, &c. these last words may be considered as containing explanations and limitations of the general power of congress; as was the foregoing part of this sentence a limitation of the general executive power. And accordingly the most correct terms are used for limiting legislative discretion, and explaining its objects; according to the words of this sentence, the judge is to receive a compensation, *for his services*. To whom are these services to be rendered? To the people, for the benefit of the people. Who is to judge of the necessity or utility of these services? The constitution has ordained, that congress, or in other words the representatives of the people, shall be the tribunal. Suppose there should be no services required, none for the judge to perform, or that congress should so think and determine. Is the judge intitled to compensation? He is not. The condition of service for the benefit of the people, is the express consideration upon which the compensation accrues. No service is rendered; the competent tribunal says, there is none required, of course, no compensation accrues. The judge is entitled to receive none. On this point, an obvious and most important difference of opinion exists between the two sides of the committee. On one side it is contended, that the office is the vested property of the judge conferred on him by his appointment, and that his good behaviour is the consideration of his compensation, so long therefore as his good behaviour exists, so long his office must continue in consequence of his good behaviour, and that his compensation is his property in virtue of his office, and therefore cannot be taken away by any authority whatever, although there may be no service for him to perform. On the other side it is contended, that the good behaviour is not the consideration upon which the compensation accrues; but services rendered for the public good; and that if the office is to be considered as a property, it is a property held in trust for the benefit of the people, and must therefore be held, subject to that condition, of which congress is the constitutional judge. Mr. G. said, considering the boundary line between these conflicting opinions, to be the boundary line between offices held for public utility, and offices held for personal favor, he could not bestow too much attention upon this part of the discussion; for if the construction gentlemen contended for should prevail, in vain have the framers of the constitution with so much jealous circumspection erected so many ramparts against the introduction of some of these offices in the government of the United States. A sinecure office is an office held without the condition of service; often for past services already compensated; often for present favor, without the condition of any service. For the purpose of excluding from the federal government all sinecure offices, the sages who formed the constitution have through every part of it connected services and compensation, and they ought never to be separated in construction. The 6th section of the 1st Art. is in these words, 'The senators and representatives shall receive *a compensation for their services* to be ascertained by law, &c.' and so far has this principle of the rendition of service

been carried; that the ſervice of the ſenate and repreſentatives is to be rendered every day, and unleſs they do daily render ſervice, they are not entitled to their day's compenſation. In the 1ſt ſection of the 2d Art. of the conſtitution are theſe words, 'the Preſident ſhall at ſtated times, receive for *his ſervices a compenſation*, &c.' in the 3d Art. 1ſt. ſection, are theſe words, 'and ſhall (to wit, the judges ſhall) at ſtated times, receive *for their ſervices a compenſation*, &c.' In the 41ſt Sec. of the act under which the judges claim their compenſation are theſe words, 'that each of the circuit judges of the United States, to be appointed by virtue of this act, ſhall be allowed as *a compenſation for his ſervices*, &c.' Theſe expreſſions all demonſtrate the importance of coupling the ſervice and compenſation of office. But the jealous caution of the framers of the conſtitution did not ſtop at chooſing the beſt affirmative expreſſion for excluding this doctrine of ſinecure offices, they alſo applied negative reſtraints.

In the 9th ſection of the firſt article of the conſtitution, are theſe words, "No money ſhall be drawn from the treaſury but in conſequence of appropriations made by law." In the ſame ſection, "No title of nobility ſhall be granted by the United States, and no perſon holding any office of profit or truſt under them, ſhall, without the conſent of congreſs, accept of any preſent, emolument, office or title of any kind whatever from any king, prince, or foreign ſtate." If then ſervices rendered for the public beneſit, be the eſſential conſideration, upon which the compenſation does accrue to the judges; if the congreſs be the proper tribunal for pronouncing upon the neceſſity or utility of ſuch ſervice, and if they decide that no ſuch ſervice is neceſſary or uſeful; the judge ſuſtains no injury in not receiving the compenſation; becauſe he does not comply with the condition on his part, nor does he ſuſtain a hardſhip thereby; becauſe it muſt be preſumed that he underſtood the conditions attached to his office at the time of his acceptance. It has been admitted by all gentlemen that congreſs is the conſtitutional tribunal for deciding, reſpecting the ſervices to be performed. They admit that congreſs may modify the courts, diminiſh or add to their duties, alter the terms of their ſeſſions or make any other arrangements reſpecting them which do not go to take away or diminiſh their compenſations. It is to be obſerved that there is not one of theſe powers ſpecified in the conſtitution, they are therefore neceſſary inferences from the paramount power, "to ordain and eſtabliſh," and the power of repeal or to take away all the ſervices to be performed, is as neceſſary an inference, as either of the others, and has uniformly reſulted from every other ſpecified power in the conſtitution. From this part of the ſentence, therefore, it is deducible; that the only reſtraint upon the general power given to congreſs in the firſt part of the ſection to ordain and eſtabliſh courts, is that the compenſations of the judges, ſhould not be leſſened *during their continuance in office—not during their good behaviour*. And in this part of the ſentence the correct phraſeology of the conſtitution is worthy of obſervation. In ſpeaking of the executive attribute, (to wit) the appointing and commiſſioning officers, the *term good behaviour* is uſed. In ſpeaking of the legiſlative attribute (to wit) the creation of offices and fixing compenſations, the term, *during their continuance in office*, is uſed. The reaſon for this variation of expreſſion is obvious. It was known that the office might be *diſcontinued* and the judge continue to behave well, the limitation was therefore applied to the office, and not the good behaviour, becauſe if the office ſhould be diſcontinued, which is clearly implied in this expreſſion, it was not the intention of the conſtitution that the compenſation ſhould be received, no ſer-

vice in that event being to be rendered. From this interpretation of the conſtitution all the departments are preſerved in the due exerciſe of their reſpective functions for the general good, without any of the miſchievous and abſurd conſequences reſulting from the oppoſite conſtruction. It is admitted that the firſt part of this ſection expreſsly veſts congreſs with the general power to ordain and eſtabliſh courts; and if there had been no other reſtriction, the conſequent power to unordain, or aboliſh. The reſtriction relied upon is not a reſtriction in expreſs words; there are no words in the conſtitution, prohibiting congreſs from repealing a law for organizing courts. The reſtraint contended for therefore, is by implication, and that implication to ſay the leaſt, not expreſsly connected with any legiſlative attribute. Is it right? Is it a correct interpretation? That when a power is given in expreſs words for the moſt important purpoſes, that it ſhould be reſtrained or prohibited by implication? Can ſo much inattention and folly be attributed to the framers of the conſtitution, as would reſult from the ſuppoſition, that if it was their intention that a law growing out of one of the ſpecified powers, in contradiſtinction to all others, ſhould be irrepealable when once paſſed, that ſo extraordinary a principle would be left to mere implication? Such a ſuppoſition would be the higheſt injuſtice to the ſuperior intelligence and patriotiſm of thoſe gentlemen, manifeſted in every other part of the inſtrument—No, ſir, They would have made notes of admiration. They would have uſed every mark, adopted every caution, to have arreſted and fixed the attention of the legiſlature to ſo extraordinary a principle.

They would have ſaid, legiſlators! Be circumſpect! Be cautious! Be calm! Be deliberate! Be wiſe! Be wiſe not only for the preſent. But be wiſe for poſterity! You are now about to tread upon holy ground. The law you are now about to paſs, is irrepealable! irrevocable! We are ſo enamoured with the ſalutary and practicable independence of the Engliſh judiciary ſyſtem, that in infuſing its principle into our conſtitution, we have ſtampt it, with the proverbial folly of the Medes and the Perſians! If this principle had been introduced into the conſtitution in expreſs words, it would have formed an unfortunate contraſt to all other parts of the inſtrument; yet gentlemen make no difficulty in introducing that principle by conſtruction, which would have appeared ſo ſtupid and abſurd if written in expreſs words in the body of the inſtrument. But there is no ſuch language in the conſtitution. Let us ſee what is the language of that inſtrument. "The judicial power of the United States ſhall be veſted in one ſupreme court, and in ſuch inferior courts as congreſs may from time to time, ordain and eſtabliſh." Here then inſtead of cautioning the legiſlature that a law for the organization of courts when paſſed, can never be repealed, it contains an invitation to a reviſion from time to time. It contains an intimation, that the ſubject is new and difficult, and an injunction to ordain and eſtabliſh your courts from time to time, according to the reſults, which an experience of the ſyſtem alone could ſuggeſt. The gentleman from Pennſylvania (Mr. Hemphill) obſerved that the character of irrepealibility was not excluſively attached to this law, and attempted to furniſh inſtances of other laws of the ſame character. He inſtanced a law for the admiſſion of a new ſtate into the union.

The gentleman from Kentucky (Mr. Davis) had given a proper reply to that remark; the ſtrongeſt inſtance the gentleman gave, was of a law executed; after the new ſtate is admitted into the union, in virtue of a law for that purpoſe, the object of the law is anſwered.—The ſtate admitted has no ſtipulated duties to perform on its part; no ſervices to render; in the caſe before the committee the

law is in a ſtate of execution, and the judges have ſervices to render on their part which the competent tribunals may determine to be neither uſeful nor neceſſary.—A law for the appropriation of money to a given object, may be adduced as an inſtance; the money is applied; its object is anſwered; the law may be ſaid to be irrepealable; or, in other words, the repeal would produce no effect.—That is not the caſe of the law in queſtion. Mr. G. ſaid, he had no doubt but that the framers of the conſtitution had particular reference to the Britiſh act of parliament of William the 3d, for the eſtabliſhment of the independence of the judges in that country, in framing the ſection for the eſtabliſhment of the judicial department in the United States; and it is not a little remarkable, that whilſt gentlemen in one breath ſpeak of the independence of the Engliſh judges, as the boaſt and glory of that nation, in the next breath they tell us that by the repeal of the preſent act, the independence of the judges here would be immolated. Let this ſubject be examined. In the 3d chapter of the firſt book of Blackſtone's commentaries, the independence of the Engliſh judiciary is fully explained. He begged to read the expoſition of that commentator on that ſubject.

"And, in order to maintain both the dignity and independence of the judges in the ſuperior courts, it is enacted by the ſtatute, 13 W. III. c. 2. that their commiſſions ſhall be made (not, as formerly, *durante bene placito*, but) *quamdiu bene se gesserint*, and their ſalaries aſcertained and eſtabliſhed; but that it may be lawful to remove them on the addreſs of both houſes of parliament. And now, by the noble improvements of that law in the ſtatute of Geo. III. c. 23. enacted at the earneſt recommendation of the king himſelf from the throne, the judges are continued in their offices during their good behaviour, notwithſtanding any demiſe of the crown (which was formerly held immediately to vacate their ſeats) and their full ſalaries are abſolutely ſecured to them during the continuance of their commiſſions; his majeſty having been pleaſed to declare, that "he looked upon the indepen-" dence and uprightneſs of the judges, as " eſſential to the impartial adminiſtra-" tion of juſtice; as one of the beſt ſe-" curities of the rights and liberties of " his ſubjects; and as the moſt conducive " to the honor of the crown."

Now, ſir, under the doctrine contended for by the repeal of this law, let us ſee whether the judges of the United States are not more independent than the judges of England.—In the firſt place Congreſs have the power of originating, aboliſhing, modifying, &c. the courts here.—The parliment in England have the ſame power there.—Congreſs cannot remove a judicial officer from his office, ſo long as the office itſelf is deemed uſeful, except by impeachment, two thirds of the Senate being neceſſary to a conviction. In England judges can be removed from their offices, although the offices may be deemed uſeful, by an addreſs of a majority of the two houſes of parliament. Here then is one eſſential advantage in favor of the independence of the judges of the United States. Congreſs cannot diminiſh the compenſation of the judges here, *during their continuance in office*. In England the parliament may diminiſh the compenſation of the judges at their diſcretion, *during their continuance in office*. Here then is another obvious advantage in favor of the independence of the judges of the United States; whence is it then, that we hear of the independence of the Engliſh judiciary, as being the boaſt and glory of that country, and with juſtice too, and at the ſame time, hear the cry of the immolation of the independence of the judges of the United States; when under the interpretation of the conſtitution by the favorers of the repeal, the judges here are more independent than the Eng-

liſh judges? It can have no other object than to excite a popular clamor, which, if excited at all, can have only a momentary effect, and will be diſſipated as ſoon as the ſubject ſhall be thoroughly examined and underſtood. But it appeared to him, that if gentlemen really do value the independence of the judges, they have taken an unfortunate ground in the interpretation of the conſtitution. Under their conſtruction, the judges may be placed not only in a dependent, but a ludicrous point of view. Gentlemen admit that Congreſs may conſtitutionally increaſe or diminiſh the duties of the judges; give or take away juriſdiction; fix the times of holding courts, &c. ſaving therefrom the ſalaries of the judges. Under this admiſſion, Congreſs may poſtpone the ſeſſions of the courts for eight or ten years, and eſtabliſh others, to whom they could transfer all the powers of the exiſting courts. In this caſe, the judges would be held up to the people as penſioners, receiving their money and rendering no ſervice in return; or Congreſs might convert them into mere courts of piepoudre, aſſigning them the moſt paltry duties to perform, and keep them continually in ſeſſion, in inconvenient places; whilſt new courts could be erected to perform all the eſſential buſineſs of the nation. This would be taking down the high pretenſions aſſigned to the judges by the gentleman from N. Carolina (Mr. Henderſon) of being formed into a permanent corps for the purpoſe of protecting the people againſt their worſt enemies—themſelves; and degrading them into pitiful courts of piepoudre, rendering little ſervice, and receiving large compenſations.—And this would be the caſe, if party purpoſes were the object, and not the general good. According to his conſtruction, theſe abſurd reſults could not take place, unleſs by a virtual breach of the conſtitution. Becauſe, he contended, that ſervice and compenſation were correlative terms; and that there ought always to be a due apportionment of ſervice to compenſation. This he conſidered as the plain and ſound interpretation of the conſtitution, and the moment it is departed from, infinite abſurdities enſue.—He intended to have taken another view of this ſubject as it reſpects the relative influence of the law of the laſt ſeſſion, and the propoſed repeal upon this queſtion; but the gentleman from Maſſachuſetts (Mr. Bacon) has put this ſubject in ſo much ſtronger point of view than he could do, that he would refer to his remarks thereupon, obſerving only that he had no doubt but that the law of the laſt ſeſſion, now propoſed to be repealed, was in every reſpect as much oppoſed to the doctrine of gentlemen, as the contemplated repeal could be. The ſections of the law particularly alluded to, are the 24th, in theſe words, "And be it further enacted, That the diſtrict courts of the United States, in and for the diſtricts of Tenneſſee & Kentucky ſhall be, and are hereby aboliſhed;" and the 27th, in theſe words—"And be it further enacted, That the circuit courts of the United States heretofore eſtabliſhed, ſhall ceaſe and be aboliſhed."

He ſaid he would now examine ſome of the conſequences of the doctrine againſt the repeal, and ſee if it can be recommended from that conſideration. Firſt as it reſpects the judicial department. Its firſt effect is to produce a perpetual increaſe of judges and ſalaries, without any practicable mode of reducing them. This is inconſiſtent both with the general ſentiment of the people and the conſtitution, that requires that no compenſation ſhall be received, without an equivalent ſervice rendered.

The gentleman from Pennſylvania ſuppoſes that there would be as much danger that a corrupt legiſlature would give an enormous ſum, ſay 200,000 dollars to one judge, as to increaſe too great a number of judges. Yet he ſays the legiſlature is reſtrained in expreſs words from leſſening the ſalary, and infers

from that circumſtance, that it is alſo reſtrained from leſſening the number of offices. Mr. G. made from it, the direct contrary inference. If there be neither a power to leſſen the ſum nor aboliſh the office, there is no remedy for the evil the gentleman ſuggeſts. It is an incurable miſchief. There is therefore a neceſſity for a power to aboliſh the office, as a remedy againſt the enormous abuſe of giving ſo large a ſum without the rendition of equivalent ſervice. And as expreſs words were deemed neceſſary to limit the diſcretion of congreſs againſt diminiſhing the ſum, ſo would there have been greater neceſſity for expreſs words to limit the diſcretion of congreſs againſt the abolition of unneceſſary offices.

Mr. G. ſaid, that according to a ſound rule of interpretation, where a general grant of power is made, and one limitation to the general power, is expreſſed—the expreſſion of that limitation is an excluſion of all intention to make any other limitation whatever, by inference or implication. And this rule will apply to all other caſes put by gentlemen, where there is an expreſs limitation of legiſlative authority. But the moſt important conſequence from this doctrine is, that it erects the judges into a body politic, and corporate, in perpetual ſucceſſion, with cenſorial, and controling powers, over the other departments—And for what purpoſe? The gentleman from North Carolina (Mr. Henderſon) has informed us, "to protect the people againſt their worſt enemies"—themſelves! This is the real expoſition of the object in very few but emphatical words. As the inducement to the adoption of this principle, gentlemen have reminded us of the fate of a foreign country, of the violent paſſions which agitate popular aſſemblies, of the age, experience, the unaſſuming talents and unambitious virtue of judges. He ſaid the judges were ſelected from their fellow-citizens, and he preſumed, poſſeſſed the ſame human propenſities. He ſaid all men love power, and in general, thoſe love it beſt who know beſt how to uſe it. Let us apply this remark to the judges of the United States.

Very ſhortly after the eſtabliſhment of the courts, the judges decided that they had juriſdiction over the ſtates in their ſovereign capacity. Did this, in the judges, ſeem unambitious? The ſtates thought it did not. It happened that during the revolutionary war, the ſtate of Maſſachuſetts had iſſued certain obligatory bills, which were made transferable, and which were outſtanding without any proviſion for their payment—ſuits were inſtituted on theſe bills—the court determined to bring the great ſtate of Maſſachuſetts, and not Virginia, on its knees, not at the feet of juſtice, but policy. Upon the repreſentation of Maſſachuſetts, an amendment was made to the conſtitution of the United States, declaring that the conſtitution ſhould not be conſtrued to extend to authoriſing the courts to arraign and pronounce judgment againſt ſtates which had not conſented to give up their ſovereignty. Thus this unambitious project of the judges was proſtrated by a conſtitutional interpoſition. He read the amendment in the following words—"The judicial power of the United States, ſhall not be conſtrued to extend to any ſuit in law or equity commenced or proſecuted againſt one of the United States by citizens of another ſtate, or by citizens or ſubjects of any foreign ſtate." The judges have determined that they are judges in the laſt reſort upon the conſtitutionality of your laws. He propoſed not to diſcuſs this queſtion, becauſe he did not think it pertinent to the queſtion before us. He only mentioned it to ſhew their unlimited claims to power. The judges have determined that their juriſdiction extends to the *lex non scripta*, or rather to the *lex non descripta*, or common law. Does this, in the judges, ſeem unambitious? This law pervades the whole municipal regulations of the country. It is unlimited in its object, and indefinite in its

character. Legaliſe this unaſſuming claim of juriſdiction by the judges, and they have before them every object of legiſlation. They have ſent a mandatory proceſs, or proceſs leading to a mandamus, into the executive cabinet, to examine its concerns. Does this, in the judges, ſeem unambitious? Now, Sir, examine and combine the extraordinary pretenſions to power, legaliſe them, and you have preciſely that body politic and corporate, which gentlemen deem ſo important in the United States "to protect the people from their worſt enemies—themſelves!"—(Mr. Henderſon of North Carolina.) He ſaid he ſhold not reſort ſo frequently to this expreſſion, but that he did conſider it as the candid and correct expoſition of the object of gentlemen oppoſed to the repeal. It was the doctrine of irreſponſibility againſt the doctrine of reſponſibility. The latter, he had endeavoured to ſhow, characteriſed the conſtitution of the United States. It was the doctrine of deſpotiſm, in oppoſition to the repreſentative ſyſtem. It was an expreſs avowal, that the people were incompetent to govern themſelves. This he believed to have been the great characteriſtic difference from the commencement of the adminiſtration of the government to the preſent day. If indeed there be a political corps neceſſary to interpoſe between the people, and themſelves, he conſidered the judiciary corps ſupported by the doctrines on this floor, well calculated to effect that object.

He ſaid he would now examine the conſequence of the doctrine againſt the repeal, as it reſpected the legiſlature. He ſaid it would have a direct tendency to impair the reſponſibility of the repreſentatives to the people. He could not illuſtrate this obſervation better, than by giving the hiſtory of the law propoſed to be repealed.

The firſt bill for changing the organiſation of the courts of the United States, was reported to the Houſe of Repreſentatives the 11th March 1800; after undergoing ſome diſcuſſion and amendment, it was recommitted and reported again the 31ſt March 1800; on the 14th of April it was poſtponed by a majority of two votes. At this time the preſidential election was approaching, and the reſult uncertain. The bill upon which the law in queſtion was founded, was reported to the Houſe of Repreſentatives 19th December 1800, and paſſed that Houſe the 20th January 1801. It was read in the Senate 21ſt January 1801, and paſſed the 7th of February 1801. At this time the preſidential election, ſo far as it reſpected the then exiſting preſident, was aſcertained.

Mr. G. ſaid he propoſed to be particular in aſcertaining the facts reſpecting the paſſage of this law and its execution, becauſe gentlemen had complained that rumors had gone into circulation reſpecting its paſſage and the appointments under it, not warranted by the facts; a ſenſe of juſtice had therefore induced him to make the ſtricteſt enquiry into the dates and facts, and the reſult of that enquiry upon his mind, had been as unfavorable to its advocates, as any impreſſion which had been made by the rumors complained of. He ſaid at the time of paſſing the law no complaints had been preſented to Congreſs againſt the competency of the former ſyſtem—not even a memorial from the bar of Philadelphia. He believed the former ſyſtem to have been amply competent.—The buſineſs indeed had very much declined; he obſerved that in the ſpring of 1799, the whole number of cauſes inſtituted, excluſive of Maryland and Tenneſſee, amounted to 703, beſides 78 criminal proſecutions in Pennſylvania. In the fall of 1800 there were inſtituted only 355; without any information however on this point, the bill was paſſed. On the 13th of February 1801, it was approved by the Preſident. On turning to the Journals of that day it

will be found that the Houſe of Repreſentatives was not engaged in the ordinary buſineſs of the ſeſſion. They were engaged in the extraordinary buſineſs of electing a Preſident.

In a note made on that day on the journals, will be found a meſſage from the Preſident in theſe words—"A meſſage was received from the Preſident of the United States by Mr. Shaw his Secretary, notifying, that the Preſident did this day approve and ſign an act which originated in the Houſe of Repreſentatives, entitled an act to provide for the more convenient organization of the courts of the United States." Upon examing the journals themſelves, he ſaid he found an entry in theſe words, "The time agreed upon by the laſt-mentioned vote being expired, the ſtates proceeded in manner aforeſaid to the twenty-ninth ballot; and upon examination thereof the reſult was declared to be the ſame." Mr. G. ſaid, need I remind gentlemen, now preſent, who were agents in the exiſting ſcenes, of the extraordinary ſituation of Congreſs at that moment. When in the Houſe of Repreſentatives the ordinary buſineſs of legiſlation was ſuſpended, a permanent ſeſſion decreed, when lodging and ſubſiſtance were furniſhed the members within the walls of the chamber, when even a ſick bed was introduced to enable its patient to diſcharge a ſacred duty.—Need I awaken the recollection of our fellow-citizens, who were looking with indignant anxiety on the awful ſcene, beholding their repreſentatives urged by the moſt tempeſtuous paſſions, and puſhing forward to immolate the conſtitution of their country? No, Sir, the awful ſcene is freſhly remembered! And what was its object? To prevent the fair and known expreſſion of the public will in the higheſt function it has to perform.—In the choice of the chief executive magiſtrate of the nation. In this ſtate of things, when all confidence amongſt the members of this houſe was loſt—In the higheſt paroxiſm of party rage, was this law uſhered into exiſtence. And now its advocates gravely tell us to be calm, to guard againſt the danger of our paſſions. They tell us at the ſame time, that the law they have paſſed is ſacred! Inviolable! irrepealable! Does it merit this extraordinary character from the circumſtances which accompanied its paſſage? It does not.

Let us examine how this law was carried into effect. Members of the legiſlature, who voted for the paſſage of the law, were appointed to offices, not indeed, created by the law, the conſtitution having wiſely guarded againſt an effect of that ſort; but to judicial offices previouſly created; by the removal or what was called *the promotion* of judges from the offices they then held, to the offices newly created, and ſupplying their places by members of the legiſlature, who voted for the creation of the new offices. In this ſubſtitution however it appears, that no reſpect was paid to another proviſion of the conſtitution. The 6th ſection of the 1ſt Art. of the conſtitution contains theſe words, 'no ſenator or repreſentative ſhall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which ſhall have been created, or the emoluments whereof ſhall have been increaſed during ſuch time; and no perſon holding any office under the United States, ſhall be a member of either houſe during his continuance in office.' If vacancies had exiſted in the previouſly exiſting judicial eſtabliſhments, the appointments of the members of the legiſlature, might not be conſidered as a direct breach of this proviſion in the conſtitution; but this was not the fact, no vacancies did exiſt. It was neceſſary, to make proviſion for members voting for the law, that vacancies ſhould be made by the removal or promotion of the then exiſting judges. This was done under this authority in the conſtitution. 2d ſection 2d

Art. and he (to wit) 'the Preſident of the United States, ſhall nominate and by and with the advice and conſent of the ſenate, ſhall appoint ambaſſadors, and other public miniſters and conſuls, judges of the ſupreme court, and all other officers of the United States, &c.' again, 'the Preſident ſhall have power to fill up all vacancies that may happen during the receſs of the ſenate, by granting commiſſions which ſhall expire at the end of their next ſeſſion.' How did the then Preſident exerciſe the power in the preſent caſe? He did not wait until the vacancies ſhould happen. He attempted to make vacancies, by what, he called, the promotion of judges, although they held their commiſſions of him 'during good behaviour,' and without waiting to know whether the judges would accept the promotion or not, upon which event alone a vacancy could accrue; he proceeded to appoint and actually commiſſion members of the legiſlature to offices, then actually held by other commiſſions granted to other perſons. What was the effect of this procedure? That two perſons held commiſſions to perform the ſame duties, although one perſon only was authoriſed by law to diſcharge thoſe duties; whilſt the office, where the promotion was refuſed, remained vacant. This was actually the caſe, in ſeveral of the diſtricts of the United States. This ſubject will be put into a ſtill ſtronger point of view by examining the journals of the ſenate, which he was ſorry to do for that purpoſe. When diſcuſſing the bill in queſtion in the ſenate, he found this entry on their journals, 'on motion to ſtrike out the whole of the bill after the words (from and after,) ſection 1ſt line 2d, for the purpoſe of inſerting as follow, '(to wit) a ſubſtitute for the bill'. On the queſtion to agree to this motion, it paſſed in the negative—yeas 13—nays 17. He obſerved amongſt the nays, the names of Mr. Green, of Rhode-Iſland; and Mr. Read, of South-Carolina. Both theſe gentlemen received appointments in virtue of the promotion of judges under this law. If theſe gentlemen had voted on the oppoſite ſide of the queſtion; the law would never have been in exiſtence. He mentioned this circumſtance not to impugn the motives of any gentleman, but, to demonſtrate the temptation held out to the members of the legiſlature under the doctrine contended for againſt the repeal of this law. The refuſal of the preſent Preſident to correct what was called a miſtake in Mr. Green's appointment, having excited ſome clamor, it was neceſſary to put that ſubject in a correct point of view.

It ſeems that in filling up Mr. Green's commiſſion, 'the word 'circuit' inſtead of the word 'diſtrict,' was inſerted; it is preſumed by miſtake. If the commiſſion was intended for the circuit court, it was a breach of the conſtitution, in its moſt obvious letter. If it was intended for the diſtrict court, it was void ab initio; becauſe at the date of the commiſſion, no vacancy had happened, and the Preſident's right to appoint depended on that precedent condition, and he therefore in making the appointment, attempted to exerciſe a power he did not poſſeſs. It muſt be obvious to every gentleman, that Mr. Green's accepting the commiſſion under all the incidents attending the caſe, could furniſh but a negative recommendation of Mr. Green in his application for that or any other appointment. Upon a review of the hiſtory of the law in queſtion according to the doctrine of its advocates, the temptation to the legiſlature, to make permanent, irrevocable proviſion for themſelves muſt be obvious to every impartial obſerver. If when a judicial eſtabliſhment be once made, it becomes irrevocable, how eaſy would it be, for a legiſlature, combined with the executive to compenſate themſelves for the

loſs of the confidence of their conſtituents, by following the example before us? By erecting a new tier of judges, holding out to them additional emoluments, and by filling up the vacancies occaſioned by their promotion with the members of the legiſlature.

This operation would be moſt likely to take place when the repreſentatives had loſt the confidence of their conſtituents, and of courſe leſs likely to be influenced by conſiderations of public good. Again, ſir, the ſinecure ſyſtem thus eſtabliſhed would have the advantage of all other ſimilar ſyſtems exiſting in the world; becauſe if in other countries the ſinecure ſyſtem has become oppreſſive to the people, they have the conſolation to recollect, that the evil may be leſſened by the competent authority; but according to the doctrine upon which the ſyſtem is bottomed in the United States, no remedy can be applied to the miſchief by the union of all the reſponſible agents of the people.—How, ſir, would the framers of our conſtitution lament, after all the care and circumſpection they had uſed to exclude this ſyſtem entirely from the practical operation of the government, that the conſtitution itſelf ſhould be made the inſtrument of its introduction, and its permanent irrevocable eſtabliſhment? And this too at the moment of an expiring adminiſtration; when the paſſions of men juſt parting from power, were breaking down every impediment which ſtood in the way of attaining their object! Upon the whole, therefore, it appears, that this doctrine of the irrepealibility of laws derives no conſideration from the conſequences which naturally flow from it.

Mr. G. ſaid, that having exhauſted ſo great a portion of the time and attention of the committee, in diſcuſſing the conſtitutional queſtion, which had been made the cardinal point in the debate, he propoſed to confine himſelf to very few obſervations upon the expediency of the contemplated repeal. He ſaid he took it for granted that the former judicial ſyſtem was competent to the diſcharge of all the judicial buſineſs in the United States; but if that ſhould be denied, he thought it demonſtrable from the document before the committee. The gentleman from Delaware (Mr. Bayard) had intimated a doubt whether the Preſident had acted correctly in favoring us with the document; he ſhould only obſerve in reply, that the conſtitution impoſed a duty upon the Preſident from time to time, to give to Congreſs information of the ſtate of the union, and recommend to their conſideration, ſuch meaſures as he ſhall judge neceſſary and expedient; he ſaid that the number of ſuits in the courts of the U. States muſt always be very ſmall from the limited objects of their juriſdiction; this will appear by reading the 2d ſection of the 3d article of the conſtitution, limiting their juriſdiction. The whole expence of the exiſting ſyſtem is 137,000 dollars, of which 40,000 or 50,000 dollars may be attributable to the new ſyſtem; the eſtimates differing between theſe two ſums. Whether the expence be eſtimated either according to the ſervice to be rendered, or by compariſon with any other ſyſtem, it appeared to him to be enormous. He examined the document before us by way of aſcertaining the relative view of expence and ſervice, and alſo the competency of the former ſyſtem, to the diſcharge of the buſineſs. He would not however be reſponſible for preciſe clerical accuracy in his addition, which has alſo been deemed a ſubject worthy of criticiſm againſt the Preſident of the United States. But if it be within 25 per cent of being correct, it will demonſtrate, 1ſt, that the former courts were competent to the buſineſs; 2d, that the number of cauſes bear no proportion to the expence of the inſtitution.

He ſaid he would preſent to the view of the committee, the whole number of cauſes inſtituted at the reſpective ſeſ-

ſions of the courts from the ſpring of 1796, to the ſpring of 1801. He had fixed upon the year 1796 becauſe the buſineſs began then to increaſe under the influence of the Britiſh treaty.

In all the circuit courts of the United States, except Maryland and Tenneſſee, the whole number of cauſes of every deſcription inſtituted in the ſpring of 1796, were 294, fall 192—1797, ſpring 481, fall 397—1798, ſpring 325, fall 397—1799, ſpring, 703, excluſive of 98 criminal proſecutions in Pennſylvania, fall 456—1800, ſpring 461, 70 criminal proſecutions in Pennſylvania, fall 355—1801, ſpring 350—making the common calculation of ſuits ſettled between the parties without trial, diſmiſſions, abatements, &c. &c. and it would appear that the whole number of judgments againſt ſolvent perſons, would hardly compenſate the expence of the inſtitution. It alſo appears that the number of cauſes left to be tried, could eaſily be decided by the ſix former judges.

He ſaid upon looking over the number of ſuits in the eaſtern circuit, it appeared to him ſtrange, that the members repreſenting that part of the country, ſhould inſiſt upon increaſing the expence of the ſyſtem, when the courts have there ſcarcely any buſineſs to attend to; and that gentlemen in the ſouthern ſtates, where the buſineſs was greater, ſhould be willing to leſſen the expence. He ſaid he never heard the ſmalleſt complaint in the ſtate he repreſented reſpecting the incompetency of the former courts to diſcharge the buſineſs in that ſtate. He believed they had always gone through the docket, whenever they attended, and as far as his own obſervations went, that was the fact. He ſaid, it appeared ſtrange to him, that new courts and new expences ſhould be called for in other parts of the United States, when the old courts were competent to the buſineſs in that ſtate, where the buſineſs has been conſiderably more than in any other ſtate, although it is now very much declined, and probably will decline ſtill more. In the courts of Maine, Weſt Pennſylvania, Weſt Virginia, and Weſt Tenneſſee, no ſuit at all had been inſtituted in June laſt.

Under the view of the ſubject thus preſented, he conſidered the late courts as uſeleſs and unneceſſary, and the expence, therefore, was to him highly objectionable. He did not conſider it in the nature of a compenſation, for there was no equivalent rendition of ſervice. He could not help conſidering it as a tribute for paſt ſervices—as a tribute for the zeal diſplayed by theſe gentlemen in ſupporting principles which the people had denounced. He thought the federal maxim always was "millions for defence, *not a cent for tribute.*" He could not conſent to tax the people even one cent, as a tribute to men, who diſreſpected their principles.

Another objection he had to the new organization of the courts was, their tendency to produce a gradual demolition of ſtate courts, by multiplying the number of courts, increaſing their juriſdiction, making bonds or obligatory bills aſſignable with the privilege of bringing ſuits in the name of the aſſignee, &c. &c. or as gentlemen ſay, bringing federal juſtice to every man's door; the ſtate courts will be ouſted of their juriſdiction, which he thought by no means a deſirable event. Under this conſideration alone, and under the conviction he felt, of the inutility of the courts, he ſhould vote for the repeal.

Mr. G. concluded by obſerving, that upon the whole view of the ſubject, feeling the firmeſt conviction, that there is no conſtitutional impedient in the way of repealing the act in queſtion, upon the moſt fair and candid interpretation of the conſtitution. Believing that principles advanced in oppoſition, go directly to the deſtruction of the fundamental principle of the conſtitution, the reſponſibility of all public agents to the people; that they go to the eſtabliſhment of a

permanent corporation of individuals inveſted with ultimate cenſorial, and controuling power over all the departments of the government, over legiſlation, execution, and deciſion, and irreſponſible to the people; believing that theſe principles are in direct hoſtility with the great principle of repreſentative government; believing that the courts formerly eſtabliſhed, were fully competent to the buſineſs they had to perform, and that the preſent courts are uſeleſs, unneceſſary and expenſive; believing that the ſupreme court has heretofore diſcharged all the duties aſſigned to it in leſs than one month in the year, and that its duties could be performed in half that time; conſidering the compenſations of the judges to be amongſt the higheſt, given to any of the higheſt officers of the United States, for the ſervices of the whole year; conſidering the compenſations of all the judges greatly exceeding the ſervices aſſigned them, as well as conſidering all the circumſtances attending the ſubſtitution of the new ſyſtem for the old one, by increaſing the number of judges, and compenſations, and leſſening their duties by the diſtribution of the buſineſs into a great number of hands, &c.—whilſt acting under theſe impreſſions he ſhould vote againſt the motion now made for ſtriking out the firſt ſection of the repealing bill.